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United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

Thank you for your letters of July 30 requesting our views on S. 1373, the "Protection of United States Government Personnel Act of 1985", and S. 1429, the "Terrorist Prosecution Act of 1985".

On July 30, two State Department Officials, Legal Adviser Abraham D. Sofaer and Ambassador Robert B. Oakley, Director of the Office for Counter-terrorism and Emergency Planning, testified before your committee's Subcommittee on Security and Terrorism on these bills. It is our understanding, based on conversations with Senator Specter's staff, that S. 1429 is essentially intended to encompass and supersede S. 1373.

Certain technical comments on the text of S. 1429 were contained in Judge Sofaer's prepared testimony, and I will not, in the interest of brevity, repeat them here. The Department witnesses also noted the possibility that certain portions of the bill might raise investigatory and prosecutorial concerns that the Department of Justice would be in a position to address. Finally, we expressed reservations over the approach in new section 2321(e) of the bill of specific mandatory allocation of responsibilities within the Executive Branch in this area. Subject to these considerations, we support and welcome S. 1429.

With best wishes,

Sincerely,

William L. Ball, III
Assistant Secretary
Legislative and Intergovernmental Affairs

The Honorable
Strom Thurmond,
Chairman,
Committee on the Judiciary,
United States Senate.

99TH CONGRESS
1ST SESSION

S. 1429

24 JUL 1985

To amend title 18, United States Code, to authorize prosecution of terrorists who attack United States nationals abroad, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 8), 1985

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to authorize prosecution of terrorists who attack United States nationals abroad, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Terrorist Prosecution Act
4 of 1985".

5 SEC. 2. (a) Part I of title 18, United States Code, is
6 amended by inserting after chapter 113 the following:

7 **"CHAPTER 113A—TERRORIST ACTS AGAINST**
8 **UNITED STATES NATIONALS ABROAD**

"Sec.

"2321. Terrorist acts against United States nationals abroad.

"Section 2321. Terrorist acts against United States Nationals abroad.

1 “(a) Whoever in an act of international terrorism kills or
2 attempts to kill any national of the United States shall be
3 punished as provided under section 1111, 1112, and 1113 of
4 this title, except that any such person who is found guilty of
5 murder in the first degree shall be sentenced to imprisonment
6 for life, and any such person who is found guilty of attempted
7 murder shall be imprisoned for not more than twenty years.

8 “(b) Whoever in an act of international terrorism as-
9 saults, strikes, wounds, imprisons, or makes any other violent
10 attack upon the person or liberty of any national of the
11 United States in any foreign country or in international
12 waters or air space, or, if likely to endanger his or her person
13 or liberty, makes violent attacks upon his or her official
14 premises, private accommodation, or means of transport, or
15 attempts to commit any of the foregoing, shall be fined not
16 more than \$5,000 or imprisoned not more than three years,
17 or both. Whoever in the commission of any such act uses a
18 deadly or dangerous weapon shall be fined not more than
19 \$10,000 or imprisoned not more than ten years, or both.

20 “(c) For the purposes of this section, ‘international ter-
21 rorism’ is used as defined in the Foreign Intelligence Surveil-
22 lance Act, title 50, section 1801(c).

23 “(d) The United States may exercise jurisdiction over
24 the alleged offense if the alleged offender is present in the
25 United States, irrespective of the place where the offense

1 was committed or the nationality of the victim or the alleged
2 offender.

3 “(e) In enforcing subsections (a) and (b), the Attorney
4 General may request and shall receive assistance from any
5 Federal, State, or local agency, including the Army, Navy,
6 and Air Force, and the Federal Bureau of Investigation, any
7 statute, rule, or regulation to the contrary notwithstanding.”.

8 (b) The table of chapters for part I of title 18, United
9 States Code, is amended by inserting after the item for chap-
10 ter 113, the following:

“113A—Terrorist acts against United States nationals abroad... 2321”.

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99TH CONGRESS
1ST SESSION

S. 1373

To amend title 18, United States Code, to authorize prosecution of terrorists and others who attack United States Government employees abroad, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 26), 1985

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to authorize prosecution of terrorists and others who attack United States Government employees abroad, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Protection of United
4 States Government Personnel Act of 1985".

5 SEC. 2. (a) Part I of title 18, United States Code, is
6 amended by inserting after chapter 113 the following:

1 **“CHAPTER 113A—TERRORIST ACTS AGAINST**
2 **UNITED STATES GOVERNMENT EMPLOYEES**
3 **ABROAD**

“Sec.

“2331. Terrorist acts against United States Government employees abroad.

4 **“§ 2331. Terrorist acts against United States Government**
5 **employees abroad**

6 “(a) Whoever kills or attempts to kill in any foreign
7 country, or in international waters or air space, any citizen of
8 the United States shall, if found guilty in a court of the
9 United States, be sentenced to any term of years or imprison-
10 ment for life, and any such person found guilty of attempted
11 murder shall be imprisoned for not more than 20 years.

12 “(b) Whoever assaults, strikes, wounds, imprisons or
13 makes any other violent attack upon the person or liberty of
14 any citizen of the United States in any foreign country or in
15 international waters or air space, or, if likely to endanger his
16 or her person or liberty, makes violent attacks upon his or
17 her official premises, private accommodation, or means of
18 transport, or attempts to commit any of the foregoing, shall
19 be fined not more than \$5,000 or imprisoned not more than
20 three years, or both. Whoever in the commission of any such
21 act uses a deadly or dangerous weapon shall be fined not
22 more than \$10,000 or imprisoned not more than ten years, or
23 both.

1 “(c) The United States may exercise jurisdiction over
 2 the alleged offense if the alleged offender is present in the
 3 United States, irrespective of the place where the offense
 4 was committed or the nationality of the victim or the alleged
 5 offender, or the manner in which the alleged offender was
 6 brought before the court.

7 “(d) In enforcing subsections (a) and (b), the Attorney
 8 General may request and shall receive assistance from any
 9 Federal, State, or local agency, including the Army, Navy,
 10 and Air Force, the Federal Bureau of Investigation and the
 11 Central Intelligence Agency, any statute, rule, or regulation
 12 to the contrary notwithstanding.”.

13 (b) The table of chapters for part I of title 18, United
 14 States Code, is amended by inserting after the item for Chap-
 15 ter 113, the following:

16 **CHAPTER 113A—TERRORIST ACTS AGAINST**
 17 **GOVERNMENT EMPLOYEES ABROAD**

“113A—Terrorist acts against United States Government employees
 abroad 2331”.



LEGISLATIVE LIAISON

85-3451

5/K-7
Department of the Treasury *Paul*
Office of the *Should*
Assistant Secretary *Sec.*
for Enforcement
and Operations

to AMBASSADOR OAKLEY

Bf room *1* date: 9/24/85

RE: Legislative Initiatives and Terrorism

FYI, Treasury's views on one recent piece of terrorism legislation.

It seems to me that the various pieces of terrorism-related legislative ideas being introduced on the Hill ought to have a better coordinated Administration response than the rather uncertain, unreliable OMB clearance process for legislative comments.

It ought to well serve the IG/T if individual agency views on terrorism bills were solicited through the IG/T members in addition to the OMB process. We could resolve differences at the policy level (I hope) and drive the position being taken by the Administration rather than allowing OMB to "piecemeal" our views on terrorism bills.

Perhaps agency views on terrorism related bills could be circulated among IG/T members as a matter of SOP. We would not need to have meetings unless significant differences in key views had to be resolved. Written views, even telephone calls, would probably suffice in most instances.

Attachment

Robert Robert McBrien
Deputy for Security Affairs
and Crisis Management
room 4314
phone 566-8534



DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20220

23 SEP 1985

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Dear Sir:

This responds to your request for the views of the Department of the Treasury on the Department of Agriculture (USDA) draft report on H.R. 725, a bill, "To prohibit the importation into the United States of goods that are the products of countries that aid or abet acts of international terrorism against the person or property of United States citizens."

Treasury objects to the proposed report of the Department of Agriculture.

The Department of the Treasury supports the policy behind H.R. 725 because it would create additional nonmilitary options for the President to use in combatting terrorism. We believe that the bill is fully consistent with achieving the President's objectives in the battle against terrorism: objectives that have been described both in his public statements and through classified directives.

It should be noted, nevertheless, that Treasury opposes the means by which H.R. 725 authorizes the President to combat terrorism. There is no definition of what constitutes an act of international terrorism. There is no provision for covering foreign employees or agents of United States citizens, nor is there any coverage for United States Government employees, agents or property. Moreover, there is no guidance given on what quantum of evidence the President needs, if any, to prohibit importations.

We also believe that certain comments in the draft USDA report concerning the International Emergency Economic Power Act ("IEEPA"), 50 U.S.C. 1701, *et seq.*, should be clarified in order that a report by USDA reflecting the Administration's goals in combatting terrorism would not reflect a misunderstanding of IEEPA.

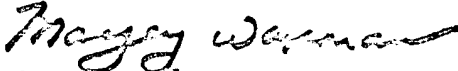
The fourth paragraph of the draft report states that the President "currently has authority to regulate or prohibit imports from these countries, including his

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authority under [IEEPA]." This statement, though literally true, may be misleading. The authority granted by IEEPA is only available if the President declares a national emergency with respect to an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States. . . ." IEEPA, sec. 202, 50 U.S.C. 1701(a). The implication in the draft report that IEEPA authority is currently available for anti-terrorism purposes and that IEEPA constitutes a literal substitute for H.R. 725 is inaccurate.

In addition, the last sentence of the fourth paragraph states that "[u]nilateral action taken under H.R. 725 would be unlikely to influence affected governments. . . ." (emphasis added). Actions under IEEPA, as suggested by the first sentence of the paragraph, also are "unilateral." The USDA report should avoid any implication that unilateral economic sanctions are ipso facto likely to be ineffective, since the Administration currently has several such programs (see, e.g., 31 CFR ch. V), including the recently promulgated Nicaraguan Trade Control Regulations.

Sincerely yours,


Margery Waxman
Deputy General Counsel